Supreme Court, U.S.
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No. 79-1448

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

NAGATA BROTHERS FARMS,

Petitioner,

vs.

THE AGRICULTURAL LABOR RELATIONS BOARD OF THE STATE OF CALIFORNIA,

Respondent,

and

UNITED FARM WORKERS OF AMERICA, AFL-CIO,

Real Party In Interest.

APPENDICES TO

PETITION FOR A WRIT OF CERTIORARI

TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

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APPENDIX A

STATE OF CALIFORNIA

BEFORE THE
AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of: NAGATA BROTHERS FARMS, INC., *Respondent,* and UNITED FARM WORKERS OF AMERICA, AFL-CIO, *Charging Party.*	**CASE NOS. 77-CE-25-X, 77-CE-25-A-X, 77-CE-34-X, 77-CE-37-X**

Agricultural Labor Relations Board,
by *Pat Zaharopoulos,* Esq., of
San Diego, for the General Counsel

Gray, Cary, Ames & Frye,
by *James K. Smith,* Esq., of
San Diego, for Respondents

Feist, Vetter, Knauf & Loy
by *Norman L. Vetter,* Esq.,
of Oceanside, for Respondents

United Farm Workers of America,
AFL-CIO, by *Michael Heumann,*
of San Ysidro, for the
Charging Party

DECISION

Statement of the Case

BEVERLY AXELROD, Administrative Law Officer: These cases were heard before me in San Diego, California on April 4, 5, 6 and 7, 1978. The Order consolidating cases issued on March 3, 1978. The complaint alleges violations of Section 1153(a) of the Agricultural Labor Relations Act, herein called Act, by Nagata Bros. Farms, Inc., herein called Respondent. The complaint is based on charges filed on November 29, 1977, January 12, 1978, December 12, 1977, and December 14, 1977 by United Farm Workers of America, AFL-CIO, herein called the Union. Copies of the charges were duly served upon Respondent. Respondent filed its answer denying violations of Section 1153(a) of the Act.

All parties were given full opportunity to participate in the hearing, and after the close thereof the General Counsel, the Union and the Respondent each filed a brief in support of its respective position.

During the hearing the complaint was amended to change the date in paragraph 10(a) and paragraph B(3) of the prayer to November 26, 1977, and to change the names in paragraphs 6 and 10(c) from Manuel Cos or Cas to Manuel Coss, and from Norm Vetter to Ivan Allen.

Case number 77-CE-37-X was dismissed for lack of evidence on motion of the General Counsel. The Union's motion to intervene was granted without objection.

Upon the entire record, including my observation of the demeanor of the witnesses, and after consideration of the briefs filed by the parties, I make the following:

Findings of Fact

I. Jurisdiction

Respondent is a California corporation licensed to do business in the State of California, and is an agricultural employer within the meaning of Section 1140(c) of the Act.

The Union is a labor organization representing agricultural employees within the meaning of Section 1140.4(f) of the Act.

II. The Alleged Unfair Labor Practices

The complaint alleges the Respondent violated Section 1153(a) of the Act by denying Union organizers access to its premises where workers live or sleep, by denying Union organizers vehicular access to its premises during an access period, and by preventing its employees from organizing fellow employees.

Respondent denies that workers live on its premises, denies that vehicular access is required or necessary during access periods, and denies preventing its employees from organizing fellow employees in any significant degree.

A. *The Operation of the Ranch*

1. **The Site:** Respondent operates three ranches producing strawberries and tomatoes. The alleged violations occurred at one of them, referred to as "Wilshire Ranch" or "La Montana," located at the end of Wilshire Road in northern San Diego County. Respondent's farming operation at Wilshire Ranch occurs on four parcels of land, each parcel being a square with sides one-quarter mile long. Three of these parcels extend from north to south, and the fourth is immediately east, so that all four form an "L." The northernmost parcel is owned individually by Harry Nagata, one of Respondent's officers; the parcel just to the south is owned individually by George Nagata, also an officer of Respondent. The southwest parcel is owned by one Arnie Raskin, and the southeast parcel is owned by George

and Harry Nagata as a partnership. Harry Nagata's home is in the southeastern parcel. Respondent's witnesses assert that it leases only those areas in these four parcels that it farms.

There is an entrance on the southwestern parcel, at the end of Wilshire Road. This is the only entrance that is primarily used for the farming operations.

In 1975, Respondent installed a cable across the road at this entrance, and it is kept locked. It prevents entry into the ranch by vehicles, but does not bar entry on foot.

Respondent has provided keys to the three Nagata brothers, to its foremen, to the Immigration and Naturalization Service, to the Oceanside Police Department, to the Texas Company (for delivery of gasoline), and to the Williams Energy Company (for delivery of propane for the cooking stove). It also allows the Camerina Catering Co. to have its own lock, for unsupervised entry of their food catering wagons. Respondent has verbal agreements with the latter as to times of entry and manner of behaving while on the property. Other suppliers making deliveries of items such as irrigation pipes (which sometimes come every other day) or containers are escorted on and off the property.

Vehicular entry to Wilshire Ranch at a place other than the gate at the foot of Wilshire Road is precluded by fencing, ditches, the contour of the land, and a gate near the home of Harry Nagata.

2. **The Work Force:** Respondent's work force ranges from a peak in May of about 250 workers to a low in January of about 50. The payroll records for the last two weeks in November 1977 (General Counsel Exhibit 5) show a total of about 220 workers. About 24 of these workers are referred to as "commuters," who come to work mostly from the Tijuana-San Ysidro area. They travel to and from work in two vans, and receive a ride allowance in addition to their pay. Employees Cantu and Urqueza, the drivers of the two vans, receive a gas allowance in addition to their ride allowance and pay.

The commuters and a dozen or so other workers are listed on the payroll records as belonging to "Group I." Supervisory personnel are also listed under "Group I." All employees in Group I received at least $2.90 per hour.

The balance of nearly 200 workers are listed as "Group II," and were paid $2.50 per hour.

The commuters are all field workers. They work in separate crews from the "local" field workers, and refer to the latter as "illegals" or "wetbacks." One reason they are called "illegals" is that they run away whenever an Immigration Officer appears, thus suggesting that they are undocumented aliens.

George Nagata and Harry Nagata are representatives of Respondent. Manual Coss and Luis Boado are employed by Respondent as supervisors.

B. ***Workers Living on the Ranch***

Harry Nagata testified that the "locals" are workers who live in the area of Respondent's farming operation, in the vicinity of Oceanside-San Luis Rey. Respondent's address list (General Counsel Exhibit 4) gives the mailing address for 196 of its workers as "P.O. Box 218, San Luis Rey, Calif. 92068," which is the same as Respondent's mailing address. Both Harry Nagata and George Nagata testified that they have no direct knowledge that anyone lives on the Wilshire Ranch. George Nagata admits he has seen evidence of persons living there, and that he "presumes" they do, although he doesn't go out in the field after working hours. Harry Nagata, who lives on the property, states he has seen fires there at night. George Nagata said he received many complaints from an adjacent landowner regarding people living on the property next to his fence. As a result, about two weeks prior to this hearing, Respondent's equipment and personnel were used to clear the brush in the areas where the people "tend to gather." A similar clearing of brush was undertaken by Respondent twice in 1977.

Under cross-examination by General Counsel, George Nagata testified as follows:

Q You testified that you bulldozed a certain area after they had complained; is that correct?

A Yes.

Q And you said you tried to discourage people from living on the property; is that correct?

A Yes.

Q Could you explain what action, if any, you took to discourage them from living there?

A We tore those plastic tents and if we encounter any physical evidence of anyone living there we would either bury it or destroy it.

Q Did you do anything else?

A I can't think of anything else.

Official Transcript
Vol. IV, p.5, lines 1-13

Tim Foote, Field Examiner for the Agricultural Labor Relations Board, visited the property on December 5, 1977, accompanied by George Nagata and his attorney, Norman Vetter. Mr. Foote was told by some workers, in Spanish, that they lived in a row between the vines, and Mr. Foote translated this to Mr. Vetter. Foote also saw burnt-out campfires and debris from food containers.

U.S. Border Patrol Agent Alvin Ray Francis testified that it is not uncommon for illegal aliens to live outdoors in caves, boxes, and plastic tents in tomato rows and the like, and that he has seen many such makeshift living quarters on the Wilshire Ranch, probably in early 1977. He did not see evidence of recent living on the ranch when he was there about noon in December 1977. On that occasion he said, "We was in plain clothes, we just got out of court, and we was just driving around to see what agriculture was going on." *Official Transcript* Vol. III, p. 51, lines 6, 7.

A large propane cook stove is kept at Wilshire Ranch. It is used by the workers at lunch time. Officer Francis has in the past apprehended aliens while they were cooking dinner and breakfast on that stove.

Scott Washburn, a Union organizer, also saw plastic tents and boxes being used as dwellings in and around the fields when he visited the ranch in 1975. He has not been on the Wilshire Ranch since then, but in 1978, about three or four weeks prior to this hearing, he observed the property from an elevated area alongside a fence at the end of Wilshire Road. It was about one p.m. on a Saturday, and he saw about 100 workers. Some of them were playing soccer, some were walking in the fields, and 40 to 50 were gathered around junk dealers in a station wagon just outside the gate. The junk dealers were selling items such as radios, batteries and used clothes.

Three commuter workers observed plastic tents, caves and box dwellings in and around the fields and canyons of the Wilshire Ranch in 1977. One witness said the caves cannot be seen in daylight without being very near, because they are covered. Another said he has always seen such dwellings at the ranch, but not in large numbers in November and December of 1977. Witnesses have seen clothes, food, blankets and household items in and around these dwellings, and have seen campfire sites and laundry drying nearby.

A catering truck comes to the ranch from 11 a.m. to noon, and again from 4 p.m. to 5:30 p.m. The commuters never buy anything from the caterers in the latter period, but they have observed the "illegals" buying food which requires cooking and household items.

The commuter workers have never seen the others arrive at the ranch. They are always there when the commuters arrive at 6 to 7 a.m., and they always stay at the ranch when the commuters leave. Nor have they ever seen cars regularly parked in the parking area other than the two in which they themselves travel and those used by the foremen. There is no public transportation to the area.

C. *Attempted Access by the Union*

On November 23, 1977, Respondent's attorney Norman Vetter and Union representative Scott Washburn were among those present at a meeting with the Regional Director of the Agricultural Labor Relations Board for the purpose of attempting to work out an access agreement. One matter discussed was the time of day that Respondent's crews finished work. Mr. Vetter remembers it as 3 or 3:30 p.m. Mr. Washburn was not sure, but thought it was about 4 p.m. There was discussion about the mechanics of access prior to work and at the lunch hour, but the meeting adjourned before any meaningful discussion of access after work, and no final agreement was reached.

On November 25, 1977, the Regional Director met briefly with George and Harry Nagata, and expressed optimism that an agreement would be worked out between Respondent and the Union, and he would try to schedule another meeting as soon as possible.

On November 26, 1977, a group of Union organizers arrived at the Wilshire Ranch gate at 4:30 p.m. The locked gate prevented them from driving in. They thereafter went to Respondent's office, arriving at about 4:45 p.m. or 4:50 p.m. At the office, Union organizer Scott Washburn asked George Nagata to admit them to the ranch. Nagata refused, stating that Respondent's crews had quit work more than one hour ago. Washburn then stated that they wanted to enter to talk to the workers living there. Nagata said he would have to call his laywers; he attempted to do so, but could not reach them. He refused to arrange for the organizers' admittance at that time and they left.

Most of the workers started work at 6:30 a.m. on November 26, took a half-hour lunch break, and quit at 3 p.m., making an eight-hour work day. The payroll records for that day (General Counsel Exhibits 5, 6 and 7) show about 14 workers who put in from nine to ten hours on that day, and one worker

put in ten and one-half hours. There was no testimony to show whether the time in excess of eight hours was before or after the time worked by the others. George Nagata testified that irrigators generally began earlier, at 5 or 5:30 a.m., and that those who worked ten hours were probably irrigators.

D. *Attempted Organizing by Respondent's Employees*

On November 22, 1977, Union representative Scott Washburn served a Notice of Intent to Obtain Access on Respondent by delivering the Notice to Respondent's business office. A conversation then took place among Scott Washburn and George and Harry Nagata concerning the identifying of Union organizers. Washburn states that he told them the organizers would be wearing a button similar to General Counsel Exhibit 10. George Nagata states he thought the button had a photograph of the bearer on it.

On December 12, 1977, the commuter workers stayed after the 3 p.m. quitting time and went to talk to the "illegals" about the Union, and to give them literature. The foreman called George Nagata about the situation, and Mr. Nagata came to the area, arriving about 3:30 p.m. He told the commuter workers they could not stay, because they did not have the proper Union button identifying them as Union organizers. The commuters then left.

The next day, December 13, 1977, George Nagata, after consulting with his lawyers, notified his foreman to allow the commuters to stay one hour after work to talk to the others and distribute literature. After work, the commuters walked toward the water pump where about 80 "illegals" had gathered. One of Respondent's foremen then picked up most of the "illegals" in a large truck, and drove them to another area of the ranch. About 18 or 20 remained, and the commuter workers talked with them until the end of the hour.

E. *Discussion of Issues and Conclusion*

1. **Regulation Access:** The Union, having duly filed and served its Notice of Intent to Obtain Access, was entitled, on November 26, 1977, to have its organizers enter Respondent's property for one hour after completion of work, to talk to employees in areas where they congregate. 8 Cal. Admin. Code Section 20900(e)(3)(A). On that day, the attempt by the organizers to enter began at 4:30 p.m. However, there was nothing in the testimony or in the exhibits in evidence to show that any employee worked later than 3 p.m. on that day. General Counsel and the Union argue that since some employees worked longer than eight hours, they must necessarily have been working later than 3:30 p.m. I cannot agree.

There was no persuasive evidence to indicate, one way or the other, whether those workers put in the extra hours before 6:30 a.m. or after 3 p.m. Therefore, denial by Respondent of regulation access under that Code section at 4:30 p.m. on November 26, 1977 was not improper.

2. **Access to Workers' Homes:** The attempted entry on November 26, 1977 was not only to talk to workers at the end of the work day, but also to visit and talk to them where they lived.

A different standard applies with respect to the organizers' attempt to visit workers who may have been living on the ranch. The Board has repeatedly held that farmworkers have the right to be contacted by, and to receive communications from, organizers at their homes, and that such communications are not only legitimate but crucial to the proper functioning of the Act. *Silver Creek Packing Company,* 3 A.L.R.B. No. 13 (1977); *Henry Moreno,* 3 A.L.R.B. No. 40 (1977); *Merzoian Brothers Farm Management Co., Inc.,* 3 A.L.R.B. No. 68 (1977); *Whitney Farms,* 3 A.L.R.B. No. 68 (1977); *Anderson Farms Co.,* 3 A.L.R.B. No. 67 (1977).

It is clear from the evidence that workers live on the ranch. Many witnesses described the crude dwellings which they inhabit: caves, hollowed out boxes, plastic tents. Witnesses also testified that they saw clothing, food, laundry hanging, garbage, and other indicia of habitation. The workers were observed buying food that requires cooking and household articles at the end of the day. They were observed playing games and walking around in the fields when the commuters went home. No one saw them arrive or leave, nor was there any evidence of transportation to enable them to do so. The conclusion is inescapable that they lived there.

The Respondent argues that the evidence presented did not concern itself, in most cases, with the months of November and December, 1977. I find this not persuasive. The testimony covered periods from 1975 to 1978, and most of it dealt with the year 1977 in general. It would be fanciful to believe that it did not exist for the period in question.

Respondent further argues that the evidence did not identify whether the persons were employees of Respondent, unemployed, or workers for other ranches. This is not substantiated. It was clear from the testimony that the witnesses recognized the workers who stayed at the ranch as employees of Respondent, even though they did not know them by name.

It is not credible that Respondent was unaware of the fact that workers lived on its property. It allowed these workers to stay there even when it ordered the commuters to leave on December 12 and 13, 1977. On December 13, one of its foremen drove workers *into* the ranch, not out of it, at the end of the work day. It allowed the canteen wagon to enter its property at the end of the work day, when those who live elsewhere had left. It allowed a large cooking stove to be available in the early morning and evening hours. It provided no address other than its own for these workers. It is not credible that its own foremen and supervisors have not seen the makeshift dwellings that other witnesses have seen. Harry

Nagata admitted seeing campfires at night, and George Nagata "presumes" that workers live there. It has received many complaints from an adjoining landowner which put it on notice that workers lived there. On December 5, 1977, an employee told Board agent Foote that they lived in the fields, and Mr. Foote translated this into English for Respondent's attorney Norman Vetter, who was present with him during that conversation. Nor is it credible that Respondent has taken any meaningful action to prevent its workers from living on its property. On the contrary, it encourages them to do so by providing them access to the facilities listed above. Although Respondent has on several occasions "bulldozed" some of the brush where habitations exist, this was a gesture to placate a neighbor rather than a meaningful attempt to terminate residence on the property. It must have been aware that the crude shelters were all too easy to duplicate.

The Union, in its post-hearing brief, argues, ". . . Nagata Brothers condones the living of the illegals on its property. Nagata Brothers tries to keep their presence as low-profile as possible, but it is economically dependent on having them live there. They provide a cheap source of labor. Unless the illegals can live at the ranch, this cheap source of labor is unavailable."

A footnote in General Counsel's post-hearing brief states, "Federal law allows employment of undocumented aliens (commonly referred to as illegals) yet makes harboring a felony. Thus it condones using their labor while outlawing giving 'simple shelter.' "

The above statements are not evidence, but they do provide some insight into the problems involved in the situation.

Respondent argues that it leases only those areas in the Wilshire Ranch that it actually farms, implying that the dwellings which are not actually in the fields are not on Respondent's property. Its gates and fences enclose the entire area.

Keys to the gate are in the possession of Respondent and those to whom Respondent gives them, and even the owner of the parcel in the southwest corner does not have a key. Respondent used its personnel and equipment to bulldoze areas that were not farmed. Whether or not its leases are restricted, Respondent certainly controls all of the property within the boundaries as shown in General Counsel Exhibits 2 and 3.

It is not necessary to determine whether the living situation of Respondent's employees constitutes a "labor camp," nor is it necessary to determine whether or not Respondent is a "landlord" with respect to those employees who live on the property. It is sufficient to establish that workers live on the property, and that Respondent has control, for the constitutional access rights to attach, and I so find. The farmworkers who live on the Wilshire Ranch have the same First Amendment rights as farmworkers who live in formal labor camps, or who rent from landlords in a more conventional setting. To hold otherwise would mean that those workers who, for whatever reason, exist in the most substandard conditions must thereby be denied the fundamental rights to have visitors and to ordinary communication.

Access to employees' homes is constitutionally required by the First Amendment: *United Farm Workers* v. *Superior Court (Buak Fruit)*, 14 Cal.3d 902 (1975). It is not the right of an employee's employer, supervisor, labor contractor or landlord to prevent communication with union organizers; this "right of home access flows directly from Section 1152 and does not depend in any way on the 'access rule' contained in our regulations, which only concerns access at the work place," *Vista Verde Farms*, 3 A.L.R.B. No. 91 (1977).

Respondent argues that even if there were a labor camp at Wilshire Ranch, the Union's access must be limited. In *Merzoian Bros. Farm Management Co.*, 3 A.L.R.B. No. 62 (1977), the record showed that the gates of a labor camp were shut and locked at night, and only a supervisor and his

assistants had keys. The Board held, "Distributing keys only to the supervisor and his assistant not only permits the employer to restrict at its pleasure when union organizers can enter the premises, but reduces the resident to the status of a prisoner, locked behind barbed wire topped fences, unable to leave or have visitors without permission of the supervisor.

"The right of employees who are residents of a labor camp to receive visitors is akin to the rights of a person in his own home or apartment. The owner or operator of a labor camp cannot exercise for the worker his right not to receive visits from union organizers. Unlike our dissenting colleague, we recognize that accommodation must be made for the rights of not just the owner and the organizer, but also for the tenant who has a basic right to control his own home life. It is our duty to balance these rights and a heavy burden will lie with the owner or operator of a camp to show thay any rule restricting access does not also restrict the rights of the tenant to be visited or have visitors."

In *Anderson Farms Company,* 3 A.L.R.B. No. 67 (1977), the Board refused to limit labor camp access by restricting such access to the hours of 2:30 to 8:30 p.m. Citing *Merzoian Brothers, supra, Isamu Minami et al.,* 3 A.L.R.B. No. 81 (1977) held, "Interfering with contact between a union and employees at the employees' home by posting guards at the entrance to labor camps or promulgating rules controlling the times of such contact is clearly a violation of Section 1153(a)."

3. **Access by Vehicle:** Having determined that access to the employees' homes is required, it is now necessary to examine the facts to determine whether access was in fact denied by Respondent.

It is uncontroverted that the barrier at the Wilshire Road gate barred vehicles, not pedestrians. Respondent argues that the furthest point from the gate is between one-half and three-fourths of a mile, and that any point on the ranch could be

reached by a walk of 15 minutes or less. It also argues that organizers sought to visit workers living "one and a half miles away," and that since this distance was beyond Respondent's boundaries, it was not required to give the organizers access.

I do not agree. The evidence indicated that workers lived in a variety of locations on the ranch, and it is likely that these locations were frequently changed. The organizers intended to visit more than one worker, and there is no way of knowing how many miles of travel might be required in going back and forth among the homes of various employees. Furthermore, it is not the distance that is crucial, but the customary mode of travel within the ranch. "Their visitors are entitled to use the customary ways and roads giving ingress and egress to the employees' place of abode." *Lake Superior Lumber Corp.,* 70 N.L.R.B. 178, 197, 18 L.R.R.M. 1345 (1946), enf. 167 F.2d 147 (6th Cir. 1948). It would follow that the roads may be used in the customary manner—in this case, by vehicle.

There was no evidence to show that anyone traveled around the ranch on foot, except Border Patrol agent Francis. He usually drives around the ranch, and has a key to the gate, but he had sometimes walked in at night so that the aliens wouldn't see him coming.

The workers are driven from place to place on the ranch. The various commercial firms drive in. The supervisors and foremen drive, rather than walk within the ranch. When visitors are taken on a tour, a vehicle is used. Even were we to assume that all employees' visitors had the time and physical ability to walk the distances involved, they should not be forced to travel in a manner different from that generally used. Effective access requires that organizers be enabled to use the customary means of travel available to visitors and business invitees of the ranch.

Failure to allow vehicular access to the Union would be discriminatory, and constitute interference with employee rights of self-organization in violation of Section 1153(a) of the Act. See *Hoerner Waldorf Corp.,* 227 N.L.R.B. No. 94, 94 L.R.R.M.

1613, 1614-15 (1976) *re* disparate enforcement of rules. The National Labor Relations Board holds that solicitation by a labor organization may be restricted no more than solicitation by other organizations. *State Chemical Co.*, 65 L.R.R.M. 1612 (1967); *Montgomery Ward& Co.*, 80 L.R.R.M. 1814 (1967).

Lastly, Respondent argues that on November 26, 1977, there was no denial of access, because Harry Nagata asserted he would have to contact his attorneys before he could respond. This position has no merit: it merely points out a reason for Respondent's refusal of access on that day. It was not a verbal response that was required, but actual access to the ranch and this was not given.

For all of the foregoing reasons, I find that Respondent's denial of vehicular entry to the Wilshire Ranch on November 26, 1977, constituted unlawful interference with the free exercise of rights guaranteed to employees by the Act, in violation of Section 1153(a).

4. **Organizing by Employees:** Respondent admits that it asked certain of its employees to leave after work on December 12, 1977, when they tried to talk to other workers about union organization. It attempts to justify this on the basis that its agent George Nagata honestly believed they could not stay because they were not wearing the badges he understood were worn by official Union organizers. This argument is untenable for several reasons.

First, good faith is not an element where interference with employees' protected activity is concerned. *N.L.R.B.* v. *Corning Works*, 293 F.2d 784, 48 L.R.R.M. 2759, 2760 (1st Cir. 1961); *N.L.R.B.* v. *McCatron*, 216 F.2d 212, 35 L.R.R.M. 2012, 2014 (9th Cir. 1954) *cert. den.*, 348 U.S. 943, 35 L.R.R.M. 2461 (1955). Furthermore, even though George Nagata mistakenly believed a Union badge containing the bearer's photograph was required to identify Union organizers, he cannot credibly be expected to have failed to recognize the identity of Respondent's own employees.

Respondent further argues that any violation which arose from requiring certain employees to leave after work on December 12 was an isolated incident, because it allowed them to stay for one hour on the following day. While this position might have merit if it referred to non-employee organizers, it is inapplicable to requirements concerning its own employees. It is unlawful to limit known or suspected union-adherent employees from staying on the premises over one hour while allowing other employees to do so. See *Floride Steel Corp.*, 224 N.L.R.B. 45, 49 (1976). On both December 12 and December 13, Respondent applied different standards to pro-Union employees than to other employees, and such discrimination is clearly an interference with the rights of employees as guaranteed under Section 1152 of the Act.

Respondent asserts that a review of the Board's access regulation gives considerable merit to George Nagata's conclusion that only United Farm Worker organizers are entitled to access. I cannot agree. Respondent states in its post-hearing brief that the regulations do not refer to employees, but only to Union organizers.

Respondent also implies that no harm was done because the literature which the employees wished to distribute was already posted at the ranch, and there was no evidence to suggest that one hour after work was not ample time for the activities of pro-Union workers. This argument is particularly repugnant to the stated purposes of the Act, since it assumes that Respondent may limit organizing activities, depending on the substantive content of the organizers' activities. It may not do this for either non-employee nor employee organizers.

Pro-Union employees may stay at the work place during non-working hours as long as other employees are allowed to do so. Furthermore, employees who live on the property may receive pro-Union employees as visitors in the same manner as they may receive other visitors, as discussed earlier.

For all of the foregoing reasons, I find that Respondent's refusal to allow certain of its employees to remain after work on December 12, 1977 constituted unlawful interference with the free exercise of rights guaranteed to employees by the Act, in violation of Section 1153(a).

III. The Remedy

Having found that the Respondent is engaged in certain unfair labor practices within the meaning of Section 1153(a) of the Act, I recommend that the Respondent be ordered to cease and desist therefrom, and take certain affirmative action designed to effectuate the policies of the Act.

In its brief, Respondent notes that only two events allegedly violated any provision of the Act; the implication is that any infringement on the rights of its employees is minimal. I cannot agree. There is nothing in the record to indicate that Respondent has changed its policy in any material respect. I must presume that the gate at Wilshire Road is still locked, that pro-Union employees are still restricted in the times they are allowed to remain talking to other employees, and that the workers who live on the ranch are restricted in their rights to receive visitors.

The exercise of improper authority by Respondent on December 12, 1977, followed by continuing illegal restrictions thereafter, cannot help but intimidate the workers in the exercise of their fundamental right to communicate with each other. This is particularly true with respect to those employees who work and live on Respondent's property. Theirs is a fragile freedom, and strong measures are required to ensure coercion-free communication.

The testimony indicates that large numbers, if not all, of the workers who live on the land are undocumented aliens. To the extent that this is so, great care must be taken to overcome their fears and educate them about their rights to engage in organization activities. Even one illegal act by Respondent may have a chilling effect on their confidence in their ability to do this.

Labor Code Section 1152 provides that employees have the right to "self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities. . .

"Implicit in these rights is the opportunity of workers to communicate with and receive communication from labor organizers about the merits of self-organization. . . . Since the A.L.R.A. became effective August 28, 1975, the Board's efforts to protect employee access to all legitimate channels of communication under these circumstances have been directed at facilitating employee ability to receive information both at the work site and in their homes. See 8 Cal. Admin. Code 20310(d)(2) (1975), repealed and re-enacted in 8 Cal. Admin. Code 20310(a)(2) and 20313." *Henry Moreno,* 3 A.L.R.B. No. 40, citing *Mapes Produce Co.,* 2 A.L.R.B. No. 54 (1976); *Silver Creek Packing Company,* 3 A.L.R.B. No. 13 (1977); 8 Cal. Admin. Code 20900 *et seq.* (1975), repealed and reenacted in part in 8 Cal. Admin. Code 20900 *et. seq.* (1976).

In *Henry Moreno, supra,* the Board ordered "In this and any such case in the future," remedies of expanded access, "in order to enable organizers to make such contacts with employees which they might have made in those employees' homes but for the employers' unlawful conduct . . ." That precedent will be followed here. Accordingly, I shall recommend: During the next following access period which the Charging Party elects to take, pursuant to 8 Cal. Admin. Code 20900(e) *et seq.,* as many organizers as are entitled to access under Section 20900(e)(4)(A) may be present during working hours for organizational purposes and may talk to workers, and distribute literature, provided that such organizational activities to not disrupt work.

During those access periods before and after work and during lunch, as specified in Section 20900(e)(3)(A) and (B), the limitations on numbers of organizers specified in Section 20900(e)(4)(A) shall not apply.

Upon the basis of the entire record, the findings of fact, and conclusions of law, and pursuant to Section 1160.3 of the Act, I hereby issue the following recommended

ORDER

Respondent, its officers, agents and representatives, shall:

1. Cease and desist from:

   a) Preventing or interfering with communications among employees at places where they work, during nonworking periods.

   b) Preventing or interfering with the right of its employees to communicate freely with and receive information from organizers at their homes located on Respondent's premises.

   c) In any other manner interfering with, restraing or coercing employees in their exercise of rights guaranteed by Labor Code Section 1152.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

   a) Post immediately on Respondent's premises copies of the attached NOTICE TO WORKERS for a period of thirty (30) consecutive days. The Regional Director shall review a list of the properties provided by Respondent to him and shall designate the locations where the attached NOTICE TO WORKERS shall be posted by Respondent. Such locations shall include, but not

be limited to, each bathroom wherever located on the properties, utility poles, and other prominent objects within the view of the usual work places of the employees. Copies of the notice shall be furnished by the Regional Director in English, Spanish, and any other native languages spoken by Respondent's employees. The Regional Director shall determine a second period of thirty (30) consecutive days within the next twelve months when these notices shall again be posted on Respondent's premises.

b) Have the attached Notice read in English and Spanish at the time that the Regional Director determines the Notice shall be read, by a company representative or by a Board agent, at a time the Regional Director determines appropriate. After this reading, the Board agent is to be accorded the opportunity to answer questions which employees might have regarding the Notice and their rights under Labor Code Section 1152. Non-hourly wage employees will be compensated for this time on an equitable rate established by the Regional Director.

c) Mail a copy of the attached Notice, in both English and Spanish, to all of the employees listed on its master payroll for the payroll periods including the dates of November 26, 1977 through the current payroll period. These Notices shall be mailed within seven (7) days following the issuance of this Order.

d) Upon filing of a written notice of Intent to Take Access, pursuant to 8 Cal. Admin. Code 20900(e)(1)(B), the Union shall have the right of access as provided by 8 Cal. Admin. Code 20900(e)(3), without restriction as to numbers of

organizers. In addition, during this same period, the Union shall have the right of access during working hours for as many organizers as are permitted under 8 Cal. Admin. Code 20900 (e)(4)(A), which organizers may talk to workers and distribute literature, provided that such organizational activities do not disrupt work.

e) During the thirty-day period in which the Union exercises its rights to take access, Respondent shall provide the Union with an updated list of its current employees and their addresses for each payroll period. Such list shall be provided without requiring the Union to make any showing of interest.

f) Respondent shall provide the Union access to its employees during regularly scheduled work hours for two (2) hours, during which time the Union can disseminate information to and conduct organizational activities with Respondent's employees. The Union shall present to the Regional Director its plans for utilizing this time. After conferring with both the Union and Respondents concerning the Union's plans, the Regional Director shall determine the most suitable times, to occur during Respondent's next harvest season, and the manner for such contact between Union organizers and Respondent's employees. During this time, no employee will be allowed to engage in work-related activities. No employee shall be forced to be involved in the organizational activities. All employees will receive their regular pay for the two hours away from work. The Regional Director shall determine an equitable payment to be made to non-hourly wage earners for their lost productivity.

g) Respondent shall notify the Regional Director in writing, within twenty (20) days from the date of the receipt of this Order, what steps have been taken to comply with it. Upon request of the Regional Director, the Respondent shall notify him periodically thereafter in writing what further steps have been taken in compliance with this Order.

Dated: May 6, 1978

Beverly Axelrod
Administrative Law Officer

NOTICE TO WORKERS

The Agricultural Labor Relations Board has told us that Union organizers may enter our property and speak with you where you live or sleep before and after work. We will not interfere with organizers who come here. You may talk with them freely.

The Agricultural Labor Relations Act is a law that gives all farmworkers these rights:

1. To organize themselves;
2. To form, join, or help unions;
3. To bargain as a group and to choose whom they want to speak for them;
4. To act together with other workers to try to get a contract or to help and protect one another;
5. To decide not to do any of these things.

You are free to read and to receive Union literature from fellow workers or Union organizers, and we will not interfere.

We recognize that the Agricultural Labor Relations Act is the law in California. If you have any questions about your rights under the Act, you can ask an agent of the Board. The nearest Board office is at 1350 Front Street, Room 2056, San Diego, California 92101, and its phone number is (714) 237-7119.

Dated: _____

By _____
(Name) *(Title)*

NAGATA BROTHERS FARMS, INC.

APPENDIX B

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

NAGATA BROTHERS FARMS, *Respondent,* and UNITED FARM WORKERS OF AMERICA, AFL-CIO, *Charging Party.*	**Case Nos. 77-CE-25-X** **77-CE-25-A-X** **77-CE-34-X** **77-CE-37-X** **5 ALRB No. 39**

DECISION AND ORDER

On May 6, 1978, Administrative Law Officer (ALO) Beverly Axelrod issued the attached Decision in this matter. Thereafter, Respondent and Charging Party each filed exceptions, a supporting brief and a brief in reply to the other's exceptions. The General Counsel also filed a brief in reply to Respondent's exceptions.

The Board has considered the record and the attached ALO Decision in light of the exceptions and briefs, and has decided to affirm the rulings, findings, and conclusions of the ALO, and to adopt her recommended Order, as modified herein.

Respondent has submitted 30 exceptions, 24 of which we hereby dismiss as either unsupported by the record or immaterial to the determination of this case. The remaining six objections taken together make four points: (1) that the acts of Respondent found by the ALO to be violations of Labor Code Section 1153(a) were based on good faith ignorance or misinterpretation of the applicable legal requirements; (2) that such acts only "minimally" infringed on employees' rights; (3)

that the recommended remedy of expanded work-site access is improper because no violation of access rule, 8 Cal. Admin. Code 20900, was found; and (4) that imposing no limit on the number of organizers who may take remedial expanded access is improper.

Interference with Employee Communication

Respondent's interference, on December 12 and 13, 1977, with the attempts of some of its employees to discuss with other employees subjects related to collective bargaining was clearly in conflict with employees' rights guaranteed by Section 1152 of the Act. Regardless of whether these were isolated incidents, or whether they were based on ignorance and/or good faith, as Respondent contends, such interference violated Section 1153(a). The test for a violation of Section 1153(a) of the Act, like that for a violation of its counterpart Section 8(a)(1) of the National Labor Relations Act, does not focus on the employer's knowledge of the law, on the employer's motive, or on the actual effect of the employer's action. It is well settled that:

> Interference, restraint and coercion under Section 8(a)(1) of the [N.L.R.A.] does not turn on the employer's motive or on whether the coercion succeeded or failed. The test is whether the employer engaged in conduct which, it may be reasonably be said, tends to interfere with the free exercise of employee rights under the Act. *Cooper Thermometer Co.*, 154 NLRB 502, 503 n. 2, 59 LRRM 1767 (1965); *American Freightways Co.*, 124 NLRB 146, 147, 44 LRRM 1302 (1959).

It is also well settled that "a violation of the Act does not need to be wholesale to be a violation." *NLRB* v. *Puerto Rico Telephone Co.*, 357 F.2d 919 (1st Cir., 1961), 61 LRRM 2516, 2517. Accordingly, we hereby dismiss Respondent's exceptions designated (1) and (2) above.

Access to Employees

This Board has consistently ruled that communication between employees and union representatives at the employees' homes is "not only legitimate, but crucial to a proper functioning of the Act." *Silver Creek Packing Company, supra,* at p. 4; *Mapes Produce Co.*, 2 ALRB No. 54 (1976). In *United Farm Workers of America* v. *Superior Court (Buack Fruit Co.)*, 14 Cal.3d 902 (1975), the California Supreme Court held that the First Amendment to the United States Constitution requires that union organizers be permitted access to employees at their homes, even if those homes are on property owned by the employer. This Board has acknowledged its own responsibility to protect employee rights "in a manner which is realistically responsive to the setting" in which they are exercised, *Henry Moreno,* 3 ALRB No. 40, p. 10 (1977), a responsibility that becomes particularly acute when we are faced with conditions of severe deprivation and vulnerability such as those in which many of the Respondent's employees were living. In the context of such conditions, union organizers must be able to take access in motor vehicles to employees at their dwellings if the employees' right to receive visitors and information is to have any substance at all. We affirm the ALO's conclusion that Respondent interfered with employees' Section 1152 rights and violated Section 1153(a) of the Act on November 26, 1977, by making it impossible for the UFW representatives to drive to where the employees were living. We find it unnecessary to deal with the Charging Party's exception to the ALO's determination that this incident did not constitute a violation of 8 Cal. Admin. Code 20900.

Remedies

Respondent excepts to those provisions of the ALO's proposed remedial Order whereby the UFW would be permitted to take more extended access to Respondent's employees than is ordinarily available under the access rule, 8 Cal. Admin. Code 20900. Respondent argues that expanded access is

inappropriate where no violation of the access rule has been found. In our view, the fact that Respondent violated a right of access based on the U.S. Constitution rather than on our regulations does not make expanded access any less appropriate as a remedy.[1]

Respondent excepts specifically to the remedies provided in paragraph 2(d) of the ALO's proposed Order, whereby (1) upon the filing by the UFW of a Notice of Intent to Take Access, an unlimited number of organizers would be permitted to take access during the thirty-day period provided by 8 Cal. Admin. Code 20900(e)(1)(B), and (2) during the same period the number of organizers permitted by 8 Cal. Admin. Code 20900(e)(4)(A) would be allowed to take access during working hours to talk to workers and distribute literature.

In considering these exceptions we must determine the kinds of extra access, and the extent thereof, best suited to effectuate the purposes of the Act.

The purpose of remedies we impose is to correct the effects of proven violations of the Act. Respondent's violations proven here were in the nature of isolated incidents rather than a course of conduct of long duration. In assessing the impact of those violations upon protected employee rights, however, the situation of the employees affected must be taken into account. We believe that Respondent's refusal on December 12 to

[1] Expanded access can be a proper remedy even where no violations of access rights have been found, as it was in *Henry Moreno, supra.* There the employer had violated 8 Cal. Admin. Code 20910 by failing to provide a union with lists of its employees. We pointed out that expanded access "would enable organizers to make such contacts with employees which they might have made in those employees' homes, but for the employer's unlawful conduct." 3 ALRB No. 40 at p. 10. See also *Sunnyside Nurseries, Inc.,* 3 ALRB No. 42 (1977), where our Order provided expanded access because we deemed "such access necessary for the UFW to reorganize employees after the unlawful discharge of 25 percent of the known UFW supporters." *Id.* at p. 2.

permit communication among employees about unionization and Respondent's particularly dramatic interference with such communication on December 13 were likely to create among employees an impression that their rights were subject to Respondent's power and control. This is totally contrary to the policy of the State set forth in Section 1140.2 of the Act:

> It is hereby stated to be the policy of the State of California to encourage and protect the right of agricultural employees to full freedom of association, self-organization, and designation of representatives of their own choosing, to negotiate the terms and conditions of their employment, and to be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

In order to correct any such impression of subjection to their employer on the part of Respondent's employees, our remedial Order will retain the provision in the ALO's proposed Order requiring Respondent to provide the UFW access to its employees during two regularly scheduled work hours, for which the employees are to receive full pay, during which time the UFW may disseminate information and conduct organizational activities.[2]

We uphold the aforementioned specific exceptions taken by Respondent to the extent that we shall, first, limit the number of UFW organizers who may take access during the next thirty-day period for which the UFW files a Notice of Intent to Take Access pursuant to 8 Cal. Admin. Code

[2] We do not agree with the assertion in Member McCarthy's dissent to this part of our Remedial Order that in providing two hours of company time we are being inconsistent with earlier cases such as *Anderson Farms Company,* 3 ALRB No. 67 (1977) and *Belridge Farms,* 4 ALRB No. 30 (1978). There, as here, our effort was to impose remedies tailored to the nature and the context of the misconduct, the effects of which we sought to overcome.

20900(e)(1)(B) to twice the number of organizers ordinarily permitted by 8 Cal. Admin. Code 20900(e)(4)(A), instead of the unlimited number of organizers permitted by paragraph 2(d) of the ALO's proposed Order. *See Pandol and Sons* v. *ALRB*, 77 Cal.App.3d 822 (1978). Second, we shall eliminate from our Order the access to employees at their job sites during work hours which the ALO proposed, as we believe the opportunities for communication among organizers and employees otherwise provided in our Order are, when viewed together with the supplementary remedial measures contained in the Order, sufficient to remedy the effects of Respondent's violations of law.

The Charging Party has excepted to the lack of specificity in the ALO's proposed Remedial Order concerning the manner in which union representatives are to be permitted to take access to employees at their dwellings. At a meeting held on November 23, 1977, the parties agreed upon specific terms for union access to employees before work and during the lunch hour. They planned to reconvene in order to discuss access during non-work time to employees living on Respondent's property, but the access violation found here occurred before they met again. Under these circumstances, we believe it is more appropriate for the parties to determine reasonable times for UFW representatives to drive onto Respondent's property to visit employees at their dwellings during non-work time than for us to impose a detailed plan for the taking of such access. As our Regulation Section 20900(e)(2) states in regard to agreements between parties respecting access, "The parties are encouraged to reach such agreements and may request the aid of the Regional Director and Board Agents in reaching such agreements. . . ." Under the terms of our Remedial Order, the Regional Director shall have authority to determine whether the terms agreed upon are reasonable and to specify reasonable terms if the parties fail to reach agreement.

ORDER

By authority of Labor Code Section 1160.3, the Agricultural Labor Relations Board hereby orders that Respondent Nagata Brothers Farms, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Preventing or interfering with the United Farm Workers of America (UFW), or other labor organization, in its communications with employees at places where they work, during non-work periods.

(b) Preventing or interfering with the right of its employees to communicate freely with and receive information from the UFW or any other labor organization at their dwellings located on Respondent's premises or elsewhere.

(c) In any other manner interfering with, restraining or coercing employees in their exercise of rights guaranteed by Labor Code Section 1152.

2. Take the following affirmative actions which are deemed necessary to effectuate the policies of the Act:

(a) Sign the Notice to Employees attached hereto which, after translation by the Regional Director into Spanish and other appropriate languages, shall be provided by Respondent in sufficient numbers in each language for the purposes set forth hereinafter.

(b) Within 31 days after the issuance of this Order, mail a copy of the attached Notice in appropriate languages to each of the employees who were on its payroll at any time during the period from November 26, 1976, to the date of mailing.

(c) Post copies of the attached Notice in all appropriate languages for 60 consecutive days in conspicuous places on its property, the period and places of posting to be determined by the Regional Director. The Regional Director shall determine a second period of 60 consecutive days within the next twelve months when these Notices shall again be posted on Respondent's premises. Respondent shall exercise due care to replace any Notice which has been altered, defaced, covered, or removed.

(d) Arrange for a representative of Respondent or a Board Agent to distribute and read the attached Notice in all appropriate languages to its employees assembled on company property, at times and places to be determined by the Regional Director. Following the reading, the Board Agent shall be given the opportunity, outside the presence of supervisors and management, to answer any questions the employees may have concerning the Notice or employees' rights under the Agricultural Labor Relations Act. The Regional Director shall determine a reasonable rate of compensation to be paid by Respondent to all non-hourly wage employees to compensate them for time lost at this reading and the question-and-answer period.

(e) Furnish such proof as may be requested by the Regional Director that the Notice has been mailed and distributed in the manner described above.

(f) Permit UFW organizers to take access as provided by 8 Cal. Admin. Code 20900(e)(3), their number to be limited to twice the number permitted by 8 Cal. Admin. Code 20900(e)(4)(A), upon filing by the UFW of a written Notice of Intent to Take Access pursuant to 8 Cal. Admin. Code 20900(e)(1)(B).

(g) Provide the UFW, during the 30-day period in which it exercises its rights to take access, an up-to-date list for each payroll period of its current employees and their addresses.

(h) Provide the UFW access to its employees during regularly-scheduled work time for two hours during which time the UFW may disseminate information to and conduct organizational activities among Respondent's employees. The UFW shall present to the Regional Director its plan for utilizing this time. After conferring with both the UFW and Respondent concerning the UFW's plans, the Regional Director shall determine the most suitable times, to occur during Respondent's next harvest season, and the manner for such contact between UFW organizers and Respondent's employees. During such times, no employee will be allowed to engage in work-related activities, but no employee shall be forced to be involved in the organizational activities. All employees will receive their regular pay for the two hours away from work. The Regional Director shall determine an equitable payment to be made by Respondent to non-hourly wage earners for their lost work-time.

(i) Permit UFW representatives to drive to the dwelling sites of employees on its property at reasonable times; such times are to be determined by the Regional Director if the parties fail to agree thereon.

(j) Respondent shall notify the Regional Director in writing, within 30 days from the date of issuance of this Order, what steps have been taken to comply with it. Upon request of the Regional Director, Respondent shall notify him periodically thereafter in writing what further steps have been taken in compliance with this Order.

Dated: May 23, 1979

GERALD A. BROWN, Chairman

RONALD L. RUIZ, Member

HERBERT A. PERRY, Member

MEMBER McCARTHY, Concurring in Part, Dissenting in Part:

I concur in the result of the majority opinion but I refrain from endorsing its broad remedial order. The imposition of a paid two-hour rather than a one-hour company time provision is excessive under the facts and circumstances of this case as well as being inconsistent with our prior remedies in comparable cases. See, e.g., *Anderson Farms Company,* 3 ALRB No. 67 (1977) and *Belridge Farms,* 4 ALRB No. 30 (1978).

Dated: May 23, 1979

JOHN P. McCARTHY, Member.

NOTICE TO EMPLOYEES

The Agricultural Labor Relations Board has found that we violated the rights of our workers by interfering with conversations among them on subjects related to collective bargaining and by refusing to let organizers of the United Farm Workers come onto property under our control in motor vehicles to visit employees during non-work hours. The ALRB has ordered us not to interfere with, restrain or coerce you, our employees, in the exercise of rights guaranteed by the Agricultural Labor Relations Act, and to permit UFW organizers to come onto our property in motor vehicles to visit and communicate with you at your dwellings. The ALRB has also ordered us to mail, post, distribute, and allow this Notice to be read to our employees.

We will do what the Board has ordered, and also tell you that the Agricultural Labor Relations Act is a law that gives all farm workers these rights:

1. To organize themselves;

2. form, join, or help unions;

3. To bargain as a group and choose whom they want to speak for them;

4. To act together with other workers to try to get a contract or to help or protect one another; and

5. To decide not to do any of these things.

You are free to read and to receive UFW literature from fellow workers or Union organizers, and we will not interfere. We will permit UFW organizers to come onto property under our control in motor vehicles to visit and communicate with you at your dwellings.

Dated:

NAGATA BROTHERS FARMS

By: _____
(Representative) *(Title)*

This is an official Notice of the Agricultural Labor Relations Board, an agency of the State of California.

DO NOT REMOVE OR MUTILATE.

Nagata Brothers Farms (UFW) 5 ALRB No. 39
Case Nos. 77-CE-25-X
77-CE-25-A-X
77-CE-34-X
77-CE-37-X

ALO Decision

The ALO concluded that Respondent, by preventing union organizers from driving to sections of the property under its ownership or control where employees were living, violated the right of its employees to receive at their homes or dwellings communication regarding their statutory rights to organize and to select a collective bargaining representative, thereby violating Section 1153(a) of the Act.

The ALO also concluded that Respondent violated Section 1153(a) by forcibly preventing on two occasions one group of its employees from communicating with another group of employees regarding their rights to organize.

The ALO found that as the General Counsel failed to establish that any employees were working after 3:30 p.m. on November 26, he therefore failed to prove the allegation that Respondent's denial of access at 4:30 p.m. that day constituted a violation of 8 Cal. Admin. Code 20900(e)(3)(A).

The ALO's proposed Remedial Order provided, among other things, access by an unlimited number of organizers during the UFW's next access period, access to workers at their job-sites during working hours, and two hours of paid company time for organizational activities.

Board Decision

The Board affirmed the ALO's findings of fact and conclusions of law as to Respondent's violations of Section 1153(a) but did not reach its alleged violation of 8 Cal. Admin. Code 20900. The Board modified the ALO's proposed Remedial Order by removing the provision for access at employees' job-sites during working hours and by limiting the number of organizers permitted to take access during the next access period to twice the number ordinarily permitted under 8 Cal. Admin. Code 20900(e). The Board's Order provided for two hours of paid company time for UFW organizational activities

among employees. The Board also ordered Respondent to permit UFW representatives to drive to the dwelling sites of employees on its property at reasonable times, such times to be determined by the Regional Director if the parties fail to agree thereon.

Member McCarthy concurred in the result of the case but dissented to the provision in the Remedial Order for two hours of paid company time, rather than one hour, for organizational activities.

* * *

This Case Summary is furnished for information only and is not an official statement of the case, or of the ALRB.

APPENDIX C

4th Civil No. APP. 2 DIV 4

COURT OF APPEAL - FOURTH DIST.

FILED

ROBERT L. FORD, Clerk

DEPUTY CLERK

IN THE

COURT OF APPEAL

FOURTH APPELLATE DISTRICT

STATE OF CALIFORNIA

DIVISION ONE

NAGATA BROTHERS FARMS Petitioner, vs. AGRICULTURAL LABOR RELATIONS BOARD Respondent.	)	ALRB Case Nos. 77-CE-25-X 77-CE-25-A-X 77-CE-34-X 77-CE-37-X (5 ALRB No. 39)

PETITION FOR REVIEW OF AN ORDER OF THE AGRICULTURAL LABOR RELATIONS BOARD
(California Labor Code § 1160.8)

JAMES K. SMITH, ESQ.
DANIEL R. CARL, ESQ.
Gray, Cary, Ames & Frye
2100 Union Bank Bldg.
San Diego, California 92101
(714) 236-1661

Attorneys for Petitioner

APPENDIX D

COURT OF APPEAL—STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION ONE

SAGATA BROTHERS FARMS, Petitioner, vs. AGRICULTURAL LABOR RELATIONS BOARD, Respondent, UNITED FARM WORKERS, AFL-CIO, Real Party in Interest.	4 Civil No. 22002 SUPERIOR COURT NO. - ALRB Case Nos. 77-CE-25-X 77-CE-34-X 77-CE-37-X 77-CE-25-A-X

BY THE COURT:

The petition for review of an order of the Agricultural Labor Relations Board is denied.

Presiding Justice

Copies to: Gray, Cary, Ames & Frye-SD
ALRB-SAC
ALRB-SD
UFW, AFL-CIO-San Ysidro
Cohen, Carder, Greenstone & Dalzell-SF
Maren E. Lopez-Salinas

APPENDIX E

4th Civil No. 22002

IN THE SUPREME COURT

OF THE STATE OF CALIFORNIA

NAGATA BROTHERS FARMS,

Petitioner,

vs.

THE AGRICULTURAL LABOR RELATIONS BOARD OF THE STATE OF CALIFORNIA,

Respondent,

and

UNITED FARM WORKERS OF AMERICA, AFL-CIO,

Real Party in Interest.

SUPREME COURT
FILED
NOV 26 1979
Clerk
Deputy

PETITION FOR HEARING

FOLLOWING DENIAL BY THE COURT OF APPEAL FOR THE FOURTH APPELLATE DISTRICT, DIVISION ONE, OF A PETITION FOR REVIEW OF A FINAL ORDER OF THE AGRICULTURAL LABOR RELATIONS BOARD.

JAMES K. SMITH
DANIEL R. CARL
GRAY, CARY, AMES & FRYE
2100 Union Bank Building
San Diego, California 92101
Telephone: 714/236-1661

Attorneys for Petitioner
NAGATA BROTHERS FARMS

APPENDIX F

CLERK'S OFFICE, SUPREME COURT
4250 STATE BUILDING

SAN FRANCISCO, CALIFORNIA 94102

DEC 13 1979

I have this day filed Order _____

In re: 4 Civ. *No.* 22002

Nagata Brothers Farms

vs.

ALRB

Respectfully,

G. E. BISHEL
Clerk

96376-677 2-79 4M OSP